

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

United States District Court  
Southern District of Texas  
FILED

DEC 01 2004

Michael N. Milby  
Clerk of Court

**CIVIL ACTION NO. B-02-154**

LUIS ALEJANDRO GARZA \*

\*

VS. \*

\*

THE UNITED STATES OF AMERICA\*

**MOTION TO PROCEED IN FORMA PAUPERIS AND REQUEST FOR  
ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

TO THE HONORABLE OF SAID COURT:

1.

Plaintiff/Appellant filed his Notice of Appeal herein on November 24, 2004.

2.

Plaintiff/Appellant is indigent and moves the court for leave to proceed on appeal in forma pauperis. Attached hereto as exhibit A is a true and correct copy of the Affidavit of Inability to Pay Costs filed on July 26, 2002, upon which the court previously allowed Plaintiff/Appellant to proceed, in the trial court, in forma pauperis.

3.

Plaintiff/Appellant's counsel is presently seeking to obtain from Plaintiff/Appellant, who is incarcerated in a federal penitentiary in Louisiana, a completed affidavit in the form set forth in the appendix to the Federal Rules of

Appellate Procedure, but can not obtain same within ten days from the filing of the Notice of Appeal as required under the Federal Rules of Appellate Procedure. Plaintiff/Appellant will supplement this motion with an updated and properly worded affidavit upon receipt.

4.

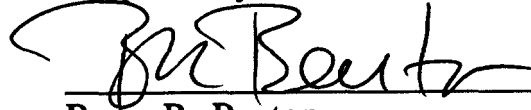
To comply with the Federal Rule of Appellate Procedure 10, within 10 days of the filing of his Notice of Appeal, Plaintiff/Appellant hereby designates the matters which he wants included in the record on appeal, to wit:

- a. The entire contents of the court's file, including all pleadings, motions and attachments;
- b. The transcriptions of the only two hearings in this matter conducted before the honorable, Magistrate Judge Felix Recio on January 16, 2003 and January 15, 2004.

5.

Wherefore Plaintiff/Appellant prays that he be granted leave to proceed on appeal in forma pauperis and that the matters requested herein be included in the record on appeal.

Respectfully submitted,



Barry R. Benton  
284 Ebony Avenue  
Brownsville, Texas 78520  
Telephone (956) 546-9900  
Facsimile (956) 546-9997  
Federal I.D. No. 3968  
ATTORNEY IN CHARGE FOR  
PLAINTIFF/APPELLANT

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 1<sup>st</sup> day of December 2004, a copy of the foregoing Motion to Proceed in Forma Pauperis and Request for Items to be Included in the Record on Appeal was forwarded to counsel of record, to wit:

Ms. Nancy L. Masso  
United States Assistant Attorney  
600 E. Harrison Ave., No. 201  
Brownsville, Texas 78520

*Via hand delivery*



BARRY R. BENTON

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

**COPY  
CIVIL ACTION**

**8 - 02 - 154**

**MISCELLANEOUS**

**B - 02 - 018**

**CIVIL ACTION NO. \_\_\_\_\_  
FEDERAL TORT CLAIMS ACT**

**United States District Court  
Southern District of Texas  
FILED**

**JUL 26 2002**

**Michael N. Milby  
Clerk of Court**

**LUIS ALEJANDRO GARZA**

**VS.**

**THE UNITED STATES OF AMERICA**

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**AFFIDAVIT OF INABILITY TO PAY COSTS**

BEFORE ME, the undersigned authority on this day personally appeared LUIS ALEJANDRO GARZA, known to me, who, being by me duly sworn, deposed and said on his oath that:

1. I am of the age of majority and of sound mind, capable of making this affidavit, personally acquainted with the facts stated therein as the Movant, Luis Alejandro Garza, in the above-entitled and numbered cause.
2. I submit this affidavit in support of a claim of indigence.
3. I state that I am too poor to pay the costs of court and am unable to give security.
4. I state that my name is Luis Alejandro Garza and my mailing address is #924-34-079, Federal Correctional Facility, P.O. Box 4200 Special Housing, Three Rivers, Texas 78071. My social security number is 452-71-7078.
5. My average income per month is \$ 0.
6. I have no other income producing property.
7. I have a spouse. Her name is Melissa Cristina Calzada and resides



at 154 Helen Ln., Brownsville, Texas 78521.

8. I have no checking or savings account.
9. I have one (1) dependent, Luis Alejandro Garza Jr. (DOB 7/2/99.)
10. I have read this affidavit and by executing this affidavit, state that the above and foregoing is true and correct in all particulars.

Luis Alejandro Garza  
LUIS ALEJANDRO GARZA

SWORN TO AND SUBSCRIBED BEFORE ME on this 9<sup>th</sup> day of July, 2002, to certify which witness my hand and seal of office.

Tammy Jo Hudek

Notary Public, State of Texas

Print Name Tammy Jo Hudek

My Commission Expires: 12-15-2004

SEAL:

